MILTON L. MORRISON

IBLA 83-573 Decided August 11, 1983

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting the high bid for parcel of land offered at a competitive oil and gas lease sale. W 84001.

Referred for hearing.

1. Oil and Gas Leases: Competitive Leases

> Where a high bid for a competitive oil and gas lease is rejected as being too low, and where, on appeal, substantial questions of fact are raised concerning the methodology used by the Bureau of Land Management in determining the minimum acceptable value for a parcel of land offered at a competitive oil and gas lease sale, the matter may be referred for a hearing to allow appellant an opportunity to show that the valuation determination was incorrect.

APPEARANCES: Lee Thompson, Esq., Wichita, Kansas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Milton L. Morrison appeals the Wyoming State Office, Bureau of Land Management (BLM), decision of March 28, 1983, which rejected his high bid for a parcel of land containing 211.64 acres in sec. 19, T. 15 S., R. 3 W., and sec. 24, T. 15 S., R. 4 W., sixth principal meridian, Saline County, Kansas, within the former Smoky Hill Warehouse Annex. Appellant submitted the only bid at the competitive oil and gas lease sale held January 19, 1983. His bid was $50 per acre, or $10,600 for the parcel.

The decision stated the parcel contained a well drilled in trespass (Morrison Grain Co. No. 1), and that the parcel was being drained by the No. 1 Royce well in sec. 19, T. 15 S., R. 3 W., within 200 feet of the boundary of the parcel.

The bid of Morrison was rejected because it was substantially below the minimum acceptable bid determined by BLM. The minimum acceptable bid was

based on a geologic report of the parcel and the surrounding area, a computer printout of oil lease history in north central Kansas, a discounted cash flow analysis and common acreage values as indicated in an "industry publication." A summary of the information used in the value determination was set out in the decision. Specifically, it was indicated that the ultimate recovery ranges between 22,000 and 40,000 barrels of oil per 10 acres. The discounted cash flow analysis gave a minimum value of $119,000 for the 10 acres surrounding the Morrison Grain Co. No. 1 well. Data from Petroleum Land Data, Inc., indicated the most common value of $15 per acre for oil and gas leases in the oil and gas area of Saline County, Kansas. The total minimum value for the 211.64-acre parcel was thus computed to be $122,025. The decision also stated the wells in the area produced initially between 11 and 35 barrels of oil per day, with at least two wells producing well over 100 barrels per day.

Appellant argues that BLM applied an erroneous and unlawful criterion in determining the minimum acceptable lease bonus under the facts of this case; that the application of the erroneous criterion was flawed by failing to correctly state or include all relevant considerations; that the rejection of his high bid was arbitrary and capricious; and that rejection of his high bid was detrimental to the public interest.

In support of his arguments, appellant submitted a report prepared by R. Douglas Myers, a petroleum engineer, which indicated the Morrison well is near the porosity pinchout of the Smolan Field and that the primary oil recovery will be slightly more than 10,000 barrels, not the 35,000 barrels postulated by BLM; that the Government used $31 per barrel in its study whereas the actual price now paid is $29 per barrel, then adjusted downward for gravity; that the Government did not include state ad valorem and severance taxes in its computation, even though Kansas has an 8 percent severance tax in addition to an ad valorem tax; that the well will reach its economic limit in 1992, not 2004 as premised by BLM; that the present worth of future production at a discount factor of 12 percent will result in a loss of over $10,000 to the producer; and that it is very probable that the Morrison well may never return to a commercial producible status because of being shut in for more than 2 years, as the brine standing in the bore hole may have caused "logging off." The initial production from the Morrison well was five barrels of oil and 100 barrels of water per day.

Appellant concedes that the Secretary of the Interior has discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the bid was inadequate, citing Amoco Production Co., 53 IBLA 72 (1981).

The Office of the Regional Solicitor, Denver, Colorado, on behalf of BLM has filed an answer to appellant's statement of reasons, arguing generally that the BLM rejection of the high bid should be affirmed, because appellant's own expert placed a higher value on the leasehold. Counsel averred to a letter of one F. Doyle Fair, dated November 13, 1981, in which it is alleged that a value of $170,000 was placed on the Morrison Grain Co. No. 1 well. No copy of such a letter is in the file before us, so we are unable to give any consideration to the allegation.

Although the Board has held that the explanation for rejection of a high bid must be sufficient for the Board to determine the correctness of the BLM decision, Southern Union Exploration Co., 51 IBLA 89 (1980). Thus, where the appellant raises substantial questions of fact concerning the methodology used or the accuracy of the BLM calculations, the Board may refer the matter to the Hearings Division for a hearing on the disputed facts. Cf. Sun Oil Co., 67 IBLA 80 (1982). In this case appellant has brought to issue BLM's methodology in arriving at its valuation of the parcel, so we believe the proper course of action is to refer this case for hearing.

Accordingly, pursuant to 43 CFR 4.415, we refer the matter to the Hearings Division for assignment to an Administrative Law Judge who will convene a hearing at a place most convenient for presentation of evidence concerning the potential production from the land in issue and the proper valuation of that land. Appellant, as the party challenging the BLM determination, shall have the burden of showing by persuasive evidence that the valuation determination is incorrect. The Judge will issue a decision determining whether appellant's bid is acceptable, which, in the absence of a timely appeal to this Board, will be final for the Department.

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Douglas E. Henriques
Administrative Judge

We concur:

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R. W. Mullen
Administrative Judge

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Anne Poindexter Lewis
Administrative Judge